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November 23, 1993

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 93-252

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of the Bell Atlantic Companies are an original and four copies of their Reply Comments in the above-referenced rulemaking proceeding.

Should there be any questions regarding these Comments, please communicate with this office.

Very truly yours,

John T. Scott, III

John T. Scott, III

Enclosures

cc: John Cimko, Jr.
Richard J. Shiben
Judith Argentieri
Peter Batacan
Nancy Boocker
David Furth

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ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

REPLY COMMENTS OF THE BELL ATLANTIC COMPANIES

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Dated: November 23, 1993

SUMMARY

The initial comments reveal a strong consensus that the Commission should adopt a consistent, unified regulatory system for commercial mobile services to achieve Congress' goal of regulatory parity among competing providers. Giving force to parity calls for adopting rules for all CMS services at one time, as well as imposing new rules where necessary to equalize competitive opportunities. Bell Atlantic's Reply Comments focus on four matters raised in the initial comments.

First, if parity is to have real meaning, the current system of equal access, which applies only to some CMS providers, must apply to all providers. The comprehensive equal access policies Bell Atlantic has proposed should be adopted as part of this proceeding. Further delay will only exacerbate the current equal access inequities which disadvantage certain CMS providers and impede fair competition.

Second, the record strongly supports forbearance from tariffing cellular services as well as all other CMS services. The evidence shows that active and growing competition makes the burdens tariffs would impose on the Commission and on CMS providers not only unnecessary but counterproductive. To rebut the claims of the few commenters who advocate tariff regulation, Bell Atlantic is submitting a detailed statement from an economist who is an expert in telecommunications markets. The statement demonstrates that rate regulation will likely lead to higher prices, harming consumers, and that there is no sound economic basis for requiring tariffs.

Third, CMS providers' interconnection obligations should not apply to resellers who have not invested in their own facilities.

Fourth, the Commission should not adopt rigid standards for acting on state petitions to regulate CMS rates, nor should it adopt a minimum waiting period before a state's regulatory regime can be reexamined. Congress intended the Commission to follow a flexible approach in responding to state petitions which would be undermined by adoption of mechanical standards.

Bell Atlantic urges the Commission to adopt the proposals set forth in its initial comments on a comprehensive basis in order to maximize parity among the competing providers of commercial mobile services.

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REPLY COMMENTS OF THE BELL ATLANTIC COMPANIES

Despite the volume of comments filed in this proceeding, there is consensus on four basic themes.

First, because parity was the lodestar for Congress in rewriting Section 332 of the Communications Act, achieving it should be the preeminent goal for the Commission. Above all else the Commission must create a unified regulatory structure for commercial mobile services, including a broad definition of that term, to give real meaning and force to the Congressionally-mandated goal of parity.

Second, the regulatory changes which are necessary to achieve parity should be adopted at one time, not piecemeal. Adopting rules for PCS, then later for other services, would only foster rather than eradicate inequities.

Third, parity means repealing some restrictive rules, but it also means crafting some new rules where doing so is necessary to equalize competitive opportunities.

Fourth, the level of competition in the mobile services market, both as it exists today and as it is expected to be

tomorrow, makes enforcement of many provisions of Title II of the Act unnecessary, and justifies forbearance.

While there are scattered comments which, in their details, offer somewhat conflicting proposals for revision of the Commission's rules, there is a remarkable amount of agreement on these basic principles.

These are the themes on which Bell Atlantic based its specific proposals. Bell Atlantic urged the Commission to take forceful action to create a unified regulatory structure for commercial mobile services. Congress decided that the current structure, marked by inconsistent rules and unequal treatment of competing providers, must go. The Commission now has the opportunity to implement Congress' mandate by creating a simplified, consistent structure to rectify the existing inequities which frustrate full and fair competition. It is an opportunity which simply cannot be missed.[1/]

Because these principles are at the heart of this proceeding, Bell Atlantic will confine its reply comments to a limited number of issues relevant to them.

1/ The comments reveal a consensus in favor of broad definitions of terms such as "commercial mobile service," "functionally equivalent" and "interconnected service," because commenters recognize that such inclusive definitions are the key to parity. Only a few parties stray from this consensus by advocating exceptions for various services. For example, Motorola contends that many SMR systems which interconnect with the public switched network for some hours per day or which employ advanced technologies should nonetheless still be treated as private. (Comments at 10-11.) Such an admitted "case by case" approach (Id. at 10) would, as most commenters recognize, eviscerate the principle of parity.

I. PARITY REQUIRES ADOPTING COMPREHENSIVE EQUAL ACCESS, AND DOING SO NOW.

Bell Atlantic has proposed a comprehensive plan for full and nondiscriminatory equal access which would allow all interexchange carriers to compete for long distance CMS traffic. (Comments at 30-35.) Given that only some carriers (such as Bell Atlantic) are required to offer their subscribers a choice of long distance carrier, it is inconsistent with the public interest (and with parity) for other carriers not to offer their subscribers the same choice.

Many commenters agree that the current situation, in which only some CMS providers are subject to equal access obligations, is irrational and must be corrected.[2/] NARUC reaffirms its unqualified support for equal access.[3/] The one state commenting on equal access, California, also advocates it.[4/] These comments concur that universal equal access will foster parity by requiring all CMS providers to offer their customers a choice among interexchange carriers, and will eliminate the current irrational, disparate treatment of different CMS providers.

2/ Equal access is supported even by carriers which are not now subject to it. E.g., Comments of PTC Cellular at 12. Other commenters supporting equal access include MCI Telecommunications Corporation at 10-12; Southwestern Bell Corporation at 31-36; BellSouth at 34; General Communication, Inc. at 2.

3/ Comments of the National Association of Regulatory Utilities Commissioners at 22. NARUC notes that it has advocated full equal access in the wireless industry for more than three years.

4/ Comments of the People of the State of California and the Public Utilities Commission of the State of California, at 11.

It is significant that dozens of CMS providers who commented on other issues did not voice any objection to equal access, even though they currently are not required to offer it. The parties opposing equal access make general, conclusory assertions about its cost in the PCS context. Given Bell Atlantic's experience in providing cellular equal access, those costs should not be excessive. There is, moreover, no reason to distinguish equal access costs from the variety of other costs in offering PCS. Providers will be required to pay engineering and application fees, participate in a competitive bidding process which will involve up-front payments, and incur substantial start-up costs. Equal access should be viewed as another cost of entering the PCS business which new providers should expect to incur, just as it has been a cost which certain providers have had to live with.

Some commenters who oppose equal access nonetheless recognize that it should either be imposed on all CMS providers, or imposed on none. They agree that if it is adopted, competitive parity requires that it be adopted across the board.[5/] These commenters

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5/ E.g., Comments of GTE at 23 and n. 57 ("[T]here is no basis for imposing equal access obligations on CMS providers. . . . [I]t is particularly important that cellular, PCS and ESMRs be treated the same for equal access and other purposes."); Comments of Liberty Cellular at 3 ("If a new equal access obligation is imposed on some CMS licensees, it should be imposed on all CMS licensees. If the Commission attempts to distinguish cellular from PCS, or small from large market areas, or operators with few customers from those with many, there will be many instances of unfair cost burdens to individual licensees. The concept of regulatory parity for CMS providers is inherently fair, and the burdens of regulation should be uniform."); Century Cellunet, Inc. at 7 n. 10 ("If such obligations are imposed on cellular carriers, however, regulatory parity demands that they also apply to the full range of wireless services.").

ignore, however, the fact that some CMS providers already must provide equal access. Applying their own parity theme, therefore, means that equal access should be imposed on all existing and new service providers.

The few remaining commenters who address equal access simply oppose any extension of equal access while leaving it in place for certain carriers, but make no attempt to reconcile that opposition with their calls for parity on other issues. The inconsistency in their positions is transparent.

The record also provides compelling reason to adopt full equal access rules for CMS in this proceeding. It has been nearly 18 months since MCI formally asked the Commission to adopt comprehensive equal access.[6/] Bell Atlantic has placed in the record of this proceeding a fully articulated set of equal access rules. There is no rational basis to defer action any longer. Doing so would, to the contrary, violate Congress' directive that the Commission adopt rules which establish parity among competing CMS providers. Without equal access, parity would become no more than a hollow slogan.[7/]

6/ Petition for Rulemaking of MCI Telecommunications Corp., RM-8012, filed June 2, 1992. Most of the comments on MCI's petition also advocated broader equal access policies. The RM-8012 record provides even further support (were any needed) for adopting across-the-board equal access standards.

7/ MCI itself notes that, given developments since it filed its petition, including AT&T's proposed acquisition of McCaw, the need to consider equal access is even more urgent today. Comments at 11. See also Comments of PTC Cellular at 12 (calling for "uniform equal access requirements" to be adopted in this rulemaking; "in view of the merger between AT&T and McCaw Cellular, this is especially critical.").

II. THE RECORD WARRANTS FORBEARANCE FROM TARIFFING CMS SERVICES.

The comments reveal near-unanimity in favor of the Commission's tentative conclusion that it can and should forbear from enforcing the tariff requirements of Section 203 of the Act. Requiring tariffs cannot satisfy any cost-benefit analysis. Filing, updating and reviewing tariffs would impose significant costs on CMS carriers and on the already scant resources of the Commission. There would be no countervailing benefit. Customers have been and in the future can be fully protected by Sections 201, 202 and 208 of the Communications Act, which prohibit unreasonable, unjust and discriminatory pricing and grant the Commission ample means to enforce those prohibitions.

In addition, nearly all comments back the Commission's tentative view that the level of competition in the cellular portion of the CMS market is sufficient to eliminate the need for tariffing.[8/] The only party filing detailed comments opposing forbearance is the National Cellular Resellers Association (NCRA). And NCRA in fact supports forbearance from retail rate tariffing. (Comments at 17.) It opposes only detariffing of wholesale rates, and only for cellular service. Its objection to full forbearance is unwarranted.

8/ E.g., Comments of New Par at 10-11; Rochester Telephone Corporation at 6-7; Rural Cellular Association at 5-6; Sprint Corporation at 11-13; PN Cellular, Inc. at 7; Southwestern Bell Corporation at 28-29.

First, NCRA's arguments rehash the same claims it presented before to the Commission in the resale proceeding, and which the Commission properly rejected.[9/] There is nothing new. Moreover, the Commission's action was affirmed in sweeping language by the D.C. Circuit.[10/]

Second, the record now before the Commission clearly warrants forbearance from cellular tariffing in large measure. Bell Atlantic, for example, has filed comprehensive reports by the responsible state agencies in Maryland and North Carolina, both of which concluded that regulation of wholesale cellular rates was unnecessary to protect the public.[11/]

9/ Petitions for Rulemaking Concerning Proposed Changes to the Commission's Cellular Resale Policies, CC Docket No. 91-33, 6 FCC Rcd. 1719, 1724-26 (1991). NCRA alleged that wholesale competition was inadequate and that facilities-based carriers were engaging in anticompetitive pricing. The Commission rejected those allegations as without evidentiary support and further found that its resale policies provided sufficient safeguards.

10/ In Cellnet Communication, Inc. v. FCC, 965 F.2d 1106 (D.C. Cir. 1992), the court rejected NCRA's appeal from the Commission's denial of its request for an inquiry into cellular competition. It held that NCRA's "evidence [of lack of competition] falls far short" and was "thin." NCRA's comments today merely echo the same "evidence" which the court found totally inadequate.

11/ Maryland removed its wholesale tariff requirement in 1988, and concluded two years later that both the wholesale and retail markets were functioning competitively, that there was both price and non-price competition, and that "there is no justification for regulating the industry." The North Carolina Utilities Commission expressly found that despite the duopoly structure for wholesale cellular service, "the provision of cellular service is competitive." Arguments paralleling those of NCRA here were made to the North Carolina Utilities Commission but were rejected. See Bell Atlantic Comments, Appendices 1 and 3.

Third, Dr. Jerry A. Hausman, an economist with extensive experience in studying wireless telecommunications markets,[12/] has reviewed NCRA's allegations. He concludes, in his affidavit which is attached as Appendix 1 to these Reply Comments, that NCRA's assumptions and conclusions are wrong, that there is competition at the wholesale cellular service level, and that wholesale rate regulation has in fact increased rates. Dr. Hausman specifically addresses wholesale prices and concludes that regulation of wholesale rates would be both unnecessary and counterproductive:

> I conclude that forbearance by the FCC would be in the best interests of consumers and that the FCC criteria for forbearance are met. Econometric evidence demonstrates that cellular prices are lower in states which do not regulate cellular. . . . The alternative regulatory framework put forward by the Resellers would likely lead to higher prices for consumers and would definitely lead to a decrease in the rate of technological advance in mobile telecommunications services. Regulation of wholesale cellular rates has led to higher prices to consumers in states which regulate cellular. . . .
>
> The claim of the Resellers (p. 12) that cellular carriers are engaged in "monopolistic or anti-competitive practices" is refuted by actual cellular price and demand data. . . . Institution of ROR [rate of return] regulation for a dynamically changing industry such as cellular would be an economic disaster. [Hausman Aff., at 2-3, 7-8.]

Fourth, NCRA provides no economic or other studies to back up its rhetoric. Given that the Commission expressly invited parties to supply specific information as to the level of competition,

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12/ Dr. Hausman's testimony before the North Carolina Utilities Commission was instrumental in that agency's decision not to tariff wholesale or retail cellular rates. Bell Atlantic Comments, Appendix 3, at 8-10.

NCRA's failure to do so is telling, and undermines its claim that rate regulation is needed.[13/]

Fifth, the Commission has already found, based on the extensive record developed in the resale proceeding, that imposing rate regulation on wholesale cellular rates may actually harm competition:[14/]

> NCRA's regulatory proposals may also be counter-productive. Filing rate information with the Commission could conceivably be anticompetitive in that it would provide competitors advance notice of price changes. In addition, engaging in traditional rate of return regulation of wholesale prices could conceivably hinder price competition, particularly if carriers' costs vary substantially. Forcing rate of return regulation on this emerging industry could lead to pricing distortion, including possible higher prices, and circumvent competition-driven investment.

The Commission's detailed findings in the resale proceeding are no less correct today, and warn against tariffing cellular service.

13/ In the resale proceeding, the Commission refused to credit NCRA's reliance on "unverified statements in investment analyst's reports and magazine articles" as well as on "articles in newspapers and trade publications". 6 FCC Rcd. at 1725. It noted that NCRA had submitted no "evidence, such as economic statistical data, to support this position." Despite having clear notice of what the Commission would require to consider claims that wholesale competition is lacking, NCRA again now relies on a newspaper story, and fails to include any economic data.

NCRA makes passing reference to (but does not include in its comments) a study by William T. Hazlett which it claims shows lack of competition in the cellular markets. But, as Dr. Hausman explains in his affidavit (Appendix 1 at 7), "Professor Hazlett has made a fundamental error in his economic analysis" which undermines his conclusions. A detailed refutation of the Hazlett study was also provided to the Commission in the PCS rulemaking proceeding (Gen. Docket No. 90-314). Haring and Jackson, "Errors in Hazlett's Analysis of Cellular Rents," filed Sept. 14, 1993.

14/ Cellular Resale Policies, supra note 9, at 1725.

Sixth, accepting the resellers's proposed approach would undermine the goal of parity by imposing differential regulation on various types of CMS providers. For example, NCRA would impose rate regulation on cellular carriers, but it says nothing about tariffing SMR providers, which are already assembling nationwide systems, or on PCS providers, which will soon be able to do so as well. NCRA fails to mention let alone justify such disparate treatment.

The California Public Utilities Commission also opposes forbearance. But its comments supplied no economic data. Moreover, as Dr. Hausman observes, his econometric studies indicate that it is California's extensive rate regulation which is the cause of higher prices to consumers in that state. (Appendix 1 at 5.)

Given the support in the record for forbearance from tariffing requirements, the significant evidence of competition both at a wholesale and retail level, and the fact that he Commission will retain ample powers to police and prevent competitive abuses, the Commission should proceed to forbear from tariffing cellular service rates.[15/]

15/ Bell Atlantic demonstrated in its comments that, in contrast to vigorous competition at the local exchange level, competition in the interexchange wireless market is minimal, requiring that tariffing continue to be imposed on the dominant carrier in that market, AT&T. Nothing in the comments undermines that proposal.

III. CMS PROVIDERS' INTERCONNECTION OBLIGATIONS SHOULD NOT EXTEND TO RESELLERS.

Alone among commenters, NCRA requests that the Commission require all CMS providers to offer "open entry" and interconnection to their CMS facilities to resellers. (Comments at 10.) It is unclear precisely what NCRA intends this to mean. If NCRA means that, where a reseller constructs its own facilities and becomes a carrier in its own right, it should be able to obtain interconnection comparable to other carriers, Bell Atlantic would not object.

If, however, NCRA intends that resellers should be able to enjoy access to a CMS carrier's switch, without having made any investment in their own facilities or network, this would represent a radical and unwarranted extension of Commission interconnection policy. In that situation, a reseller who has made no investment in its own system would be able to take unfair advantage of a competing CMS carrier's own investment. Instead of developing their own facilities, they would have access to the carriers' facilities, effectively getting something for nothing. Nothing in the Commission's Expanded Interconnection Order, 7 FCC Rcd. 7369 (1992), warrants such a policy.[16/]

16/ NCRA's request also raises issues which go well beyond the scope of the interconnection questions raised by the Notice of Proposed Rulemaking in this proceeding, and thus should not be addressed at this time. For the same reasons, the request by Comcast Corporation (Comments at 12) that the Commission take broad new actions regarding the interconnection obligations of wireline LECs go beyond the scope of the instant rulemaking and should not be addressed herein.

IV. THE COMMISSION SHOULD NOT ADOPT INFLEXIBLE TESTS FOR ACTING ON STATE PETITIONS FOR RATE REGULATION.

New Section 332(c)(3) establishes a procedure under which a state can petition to retain or impose rate regulation of CMS service. The statute leaves substantial discretion to the Commission to determine whether and the extent to which such a petition should be granted, based on its case-by-case evaluation of the specific "market conditions" in the petitioning state.

The District of Columbia Public Service Commission (DCPSC) proposes inflexible standards that would obligate the Commission to grant a state rate regulation petition when certain quantitative tests have been met.[17/] The Commission should not accept this proposal.[18/]

There is no reason why these quantitative tests prove that rate regulation is necessary to guard against unreasonable rates or to protect consumers, the prerequisites Congress imposed in Section 332(c)(3). For example, the DCPSC would allow state regulation whenever 15% of "basic service" subscribers receive such service via CMS providers -- even if there are a dozen such

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17/ In the summary to its Comments, the DCPSC asserts that states should be permitted to petition "to regulate rates and entry." (Comments at 1, emphasis added.) This would clearly violate Section 332(c)(3), which fully preempts entry regulation. Since the DCPSC's comments do not further refer to entry regulation, this appears to have been an inadvertent misstatement.

18/ Other states do not support the DCPSC's proposal. The New York State Department of Public Service warns against adopting "a precise mathematical model or formula" or a "quantitative approach," instead suggesting that the Commission consider "a number of interrelated factors." Comments at 15. Bell Atlantic agrees that such flexibility is the best approach as well as the one Congress intended.

providers. But this test ignores the Act's additional requirement that "market conditions" fail to protect against unreasonable rates. Section 332(c)(3) and its legislative history make clear that substitution of wireless for wireline service is not sufficient to warrant state rate regulation. A state also must show that there is inadequate competition in the provision of CMS itself.[19/]

The DCPSC would also require grant of a state petition whenever a CMS provider's rates for "basic service" are higher than rates for landline basic service. (Comments at 12.) A comparison of wireless to wireline rates in no way shows, however, that the wireless market is not competitive. The cost of wireless service may be greater than wireline service for multiple reasons having nothing to do with competition, such as the fact that it is a newer service, offers expanded capabilities (not the least of which is mobility) and must recoup its substantial up-front investment. In any event the issue under Section 332(c)(3) is not how wireless and wireline rates compare, but whether there is

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19/ "If, however, several companies offer radio service as a means of providing basic service in competition with each other such that consumers can choose among alternative providers of this service, it is not the intention of the conferees that States should be permitted to regulate these competitive services simply because they employ radio as a transmission means." H.R. Rep. No. 103-213, 103d Cong., 1st Sess., Committee on the Budget, Report on the Omnibus Budget Reconciliation Act of 1993, at 493.

NARUC (Comments at 5-7) also incorrectly asserts that Section 332(c)(3) permits state regulation based only on a showing of "substitution." It relies, however, on language from the House bill, and ignores the final Conference Committee statement quoted above, which makes plain that lack of competition must also be shown.

competition among wireless services which obviates the need for rate regulation. The DCPSC's rigid tests would not address this issue. (To the extent that the DCPSC is concerned that wireless service may pose a threat to conventional wired service, the fact that wireless service rates are higher would undercut any such threat.)

For the same reasons, the DCPSC's suggestion that, should a state petition be granted, parties may not seek to repeal the grant for at least three years (Comments at 13), is misguided. Section 332(c)(3)(B) prohibits such mandatory time frames.[20/] The Commission has the discretion to determine how long the state may regulate rates, and how promptly it will reexamine its grant. Those time frames will depend on such factors as the extent of rate regulation granted, conditions in the state, and how rapidly conditions change. Particularly with the likelihood that multiple PCS providers will be licensed within the next year, a three-year "freeze" is ill-advised.

In short, Section 332(c)(3) precludes the Commission from prejudging the petition process by adopting inflexible, mechanical standards. Each state which desires to regulate rates should be free to fashion its factual showing as long as it meets the standards set forth by Congress (see Bell Atlantic Comments at 41-43),

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20/ "If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary . . . . After a reasonable period of time, as determined by the Commission, has elapsed . . . , any interested party may petition the Commission for an order that the exercise of authority by a State . . . is no longer necessary . . . ."

and the Commission should be free to act based on the particular circumstances present in that state.

CONCLUSION

For the reasons set forth in its initial Comments and in these Reply Comments, Bell Atlantic urges the Commission to adopt a comprehensive approach to regulating the wireless industry which, at one time, removes unwarranted regulations, but imposes rules where necessary, to achieve competitive parity.

Respectfully submitted,

THE BELL ATLANTIC COMPANIES

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Dated: November 23, 1993

APPENDIX 1

Affidavit of Professor Jerry A. Hausman

JERRY A HAUSMAN, being duly sworn, deposes and says:

1. My name is Jerry A. Hausman. I am the MacDonald Professor of Economics at the Massachusetts Institute of Technology in Cambridge, Massachusetts, 02139.

2. I received an A.B. degree from Brown University and a B.Phil. and D. Phil. (Ph.D.) in Economics from Oxford University where I was a Marshall Scholar. My academic and research specialties are econometrics, the use of statistical models and techniques on economic data, and microeconomics, the study of consumer behavior and the behavior of firms. I teach a course in "Competition in Telecommunications" to graduate students in economics and business at MIT each year. Exchange access competition, competitive access providers, and bypass are some of the primary topics covered in the course. I was a member of the editorial board of the Rand (formerly the Bell) Journal of Economics for the past 13 years. The Rand Journal is the leading economics journal of applied microeconomics and regulation. In December 1985, I received the John Bates Clark Award of the American Economic Association for the most "significant contributions to economics" by an economist under forty years of age. I have received numerous other academic and economic society awards. My curriculum vitae is attached.

3. I have done significant amounts of research in the telecommunications industry. My first experience in this area was in 1969 when I studied the Alaskan telephone system for the Army Corps of Engineers. Since that time, I have studied the demand for local measured service, the demand for intrastate toll service, consumer demands for new types of telecommunications technologies, marginal costs of local service, costs and

benefits of different types of local services, including the effect of higher access fees on consumer welfare, demand and prices in the cellular telephone industry, and consumer demands for new types of pricing options for long distance service. I have also studied the effects of new entry on competition in paging markets, telecommunications equipment markets, exchange access markets, and interexchange markets and have published a number of papers in academic journals about telecommunications. Lastly, I have also edited two recent books, Future Competition in Telecommunications (Harvard Business School Press, 1989) and Globalization, Technology, and Competition in Telecommunications (Harvard Business School Press, 1993).

4. I have been involved in the cellular industry since 1984. I was involved in PacTel's purchase of Communications Industries in 1985 and have provided testimony on previous occasions on cellular regulation to the California PUC, the North Carolina PSC, and the Connecticut PUC. I also previously submitted testimony to the FCC on questions of cellular regulation, including the question of whether cellular companies should be allowed to bundle cellular CPE with cellular service. During the PCS proceedings I have filed 3 affidavits which considered eligibility questions for LECs, the presence of economies of scale and scope in providing PCS, and the design of an appropriate auction framework for PCS spectrum. I also have done significant academic research in mobile telecommunications and it is one of the primary topics in my graduate course, "Competition in Telecommunications", which I teach each year at MIT.

5. I have been asked by Bell Atlantic Mobile (BAM) to discuss whether consumers would be made better off if the FCC decided to forbear from regulation of wholesale cellular rates. I also respond to the economics claims made in the "Comments of National Cellular Resellers Association" (November 8, 1993, "Resellers"). I conclude that forbearance by the FCC would be in the best interests of consumers and that the FCC criteria for

forbearance are met. Econometric evidence demonstrates that cellular prices are lower in states which do not regulate cellular. Furthermore, recent experience in North Carolina demonstrates that cellular prices decreased after North Carolina deregulated cellular. The alternative regulatory framework put forward by the Resellers would likely lead to higher prices for consumers and would definitely lead to a decrease in the rate of technological advance in mobile telecommunications services.

A. Cellular Prices are Lower in States which Do Not Regulate Cellular

6. Regulation of wholesale cellular rates has led to higher prices to consumers in states which regulate cellular. I have conducted an econometric study each year since 1989 which compares cellular services prices in states which regulate cellular to prices in states which do not regulate cellular, while controlling for other economic factors, e.g., average commuting distance, which also may affect cellular prices. The results each time have demonstrated that regulation of wholesale cellular prices leads to higher prices to consumers on the order of 5% to 15%.

7. I have updated my econometric study using current data. I have conducted an econometric study based on data collected in a telephone survey of the 40 largest cellular markets conducted in May 1993. The results of the study are given in Exhibit 1. In the study I consider the minimum monthly bill based on average industry usage (160 minutes/month with 80% peak usage) across all the cellular carriers. As explanatory variables in the regression specification I use the MSA population, average income, average commuting distance, and an indicator variable for whether the state regulates cellular prices. My results indicate that price regulation does not lead to lower cellular prices, and indeed, the econometric estimates are that prices are

about 5-10% higher in states which regulate cellular prices.[1] Thus, analyses of cellular prices demonstrate that regulation of wholesale cellular prices does not lead to lower prices for consumers. If anything, allowing market forces solely to determine cellular prices leads to lower prices for consumers.

8. Deregulation of cellular has also benefitted consumers. I testified in North Carolina in 1991 in favor of deregulation. The North Carolina Utilities Commission decided to deregulate cellular in February 1992. In North Carolina the cellular providers and the Public Staff were in favor of deregulation while a group of independent cellular agents opposed it. The Commission decided that "....exempting cellular carriers from regulation under the framework discussed below will increase the degree of competition. The elimination of the notice and filing requirements for tariff changes and new service offerings will give carriers more freedom to offer special promotion and discounts--in effect sales--and to experiment with different pricing strategies." (No. P-100. Sub 114, February 14, 1992, p. 10)

Since deregulation occurred in North Carolina in 1992, the price of 160 minutes of cellular usage in Greensboro has decreased from $71 per month to a current price of $66 per month. This decrease of about 7% is almost exactly what my econometric model predicted would happen. Cellular customers in Greensboro have certainly benefitted from the 7% decrease in the price of their cellular service.[2] This outcome validates the North Carolina Commission's decision: "While cellular prices in North Carolina are presently competitive, the Commission concludes that exempting carriers from regulation holds the prospect for even lower prices for North Carolina consumers in the future." (ibid.)

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[1] This comparison holds the other economic factors, e.g. population, constant so that the effect of regulation can be considered itself.

[2] No other metropolitan area in North Carolina was large enough to be included in my survey of cellular prices.